TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 110.

SAMUEL G. JONES, APPELLANT,

vs.

THE CITY OF PENSACOLA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED OCTOBER 10, 1874.

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1 Pleas held before the honorable the circuit court of the United States, fifth judicial circuit for the northern district of Florida, western division, in a cause wherein Samuel G. Jones, who is a citizen and resident of the State of Alabama, is complainant, and the city of Pensacola, a public corporation and duly created by the laws of the State of Florida, is defendant.

Now at this day, to wit, the sixteenth day of October, A. D. 1871, came the said complainant, by Richard L. Campbell, his solicitor, and filed the following bill, to wit:

To the honorable the justices of the circuit court of the United States of America in and for the northern district of Florida, western division:

Your orator, Samuel G. Jones, who is a citizen and resident of the State of Alabama, brings this his bill against the city of Pensacola, a public corporation in and duly created by the laws of the State of Florida, and thereupon humbly complaining, shows unto your honors:

That by an act of the legislature of the late Territory, now State, of Florida, approved the 2d of March, A. D. 1839, the said city of Pensacola, a pre-existing corporation, was rechartered; that by the 2, 4, and 6 sections of said act the powers of said corporation were vested in a mayor and a board of seven aldermen, who should "in all cases continue to act in their respective functions" until the election and qualification of their successors; that among the powers conferred on said corporation by the 16th section of said act was the power to borrow money not exceeding $5,000 in any year, and to lay and impose taxes generally, and to provide for the collection thereof, provided that a higher tax than ¾ of one per cent. should not be imposed on real estate; that by an act of the general assembly of the State of Florida approved the 17th of December, 1850, entitled "An act to amend the act incorporating the city of
2 Pensacola, approved March 2d, 1839," the 16th section of the said charter of 1839 was so amended as to extend the limitation upon the power of the corporation to tax real estate from ¾ to two per cent., and the limitation of $5,000 upon the power to borrow money was repealed, and a loan of $60,000 was authorized to be effected for the purpose of constructing a plank road or railroad from the said city of Pensacola in the direction of Montgomery, in Alabama; and that by an act of the general assembly of the State of Florida, approved 3d of January, 1853, amendatory of the said act of the 17th of December, 1850, it was provided, "that the mayor and board of aldermen of the city of Pensacola, with the consent of a majority of the corporation composing said city, be, and are hereby, authorized to subscribe, in the name of the city of Pensacola, any amount of money which they may deem necessary to any plank road or railroad leading from the city of Pensacola; and for the purpose of procuring the amount of subscription, the said city of Pensacola shall have power to borrow the same, and shall have power to impose a tax on real estate in said city at a rate not exceeding two per cent. on the assessed value of such property;" and "that the payment of taxes so imposed may be enforced in the same manner as in other cases."

And your orator further shows unto you honors that by an act of the general assembly of the State of Florida approved the 8th day of January, 1853, the Alabama and Florida Railroad Company was chartered for the purpose of constructing a railroad from some point on Pensacola Bay (the said city of Pensacola being the point afterwards selected) northward to the boundary-line of the States of Florida and Alabama, and there to connect with another line of railroad to be constructed from

the city of Montgomery, in the State of Alabama, southward to the boundary-line of said State of Alabama and Florida, under a charter granted by the State of Alabama to another company, known as the Alabama and Florida Railroad Company; and that to avoid the confusion consequent upon the said companies having the same name, and operating a continuous line of railroad, though under two charters, and organizations distinct from each other, the company chartered by the State of Florida adopted the addition of "Florida," and was thenceforth known as the Alabama and Florida Railroad Company of Florida.

3 And your orator further shows unto your honor that under the said act of the general assembly of the State of Florida, approved January 3d, 1853, the said city of Pensacola subscribed for $250,000 of the capital stock of the Alabama and Florida Railroad Company of Florida, and in payment for which stock the said city of Pensacola executed, under its corporate seal, and delivered to the said Alabama and Florida Railroad Company of Florida, five hundred (500) bonds, which recite that they were issued in conformity with the 2d section of the said act approved the 3d of January, 1853, of $500 each, all payable twenty years after date, (the deliveries of bonds being at various times, as the work progressed, the date of the several deliveries vary from 1st January, 1857, to the 1st of July, 1861, inclusive,) to the said Alabama and Florida Railroad Company of Florida, or bearer, with interest at the rate of seven per cent. per annum, payable semi-annually, on the 1st day of January and the 1st day of July in each year between the date and maturity of the bonds, on the delivery of the interest-coupons of $17 $\frac{50}{100}$ each attached to said bonds, as said coupons matured, at such bank in the city of New York as the treasurer of the said city of Pensacola might direct; and that your orator is the lawful holder of five hundred and eighty-two of said coupons, now past due, to wit, one due 1st January, 1861; one due 1st January, 1865, one due 1st January, 1866, and five due 1st of July, 1866, eighteen due 1st January, 1867, and twenty-six due the 1st July, 1867; twenty-four due 1st January, 1868, and twenty-three due 1st July, 1868; sixty-two due 1st January, 1869, and eighty-six due 1st July, 1869; twenty due 1st January, 1870, and fifty-two due 1st July, 1870; eighty-two due 1st January, 1871, and eighty-one due 1st July, 1871.

And your orator further shows unto your honors that the said city of Pensacola has never made any provision for the payment of said coupons at any bank in the city of New York or in any other way or place; that until about the 1st of January, 1871, the said city of Pensacola received the said coupons in payment for taxes, but the taxes assessed were never sufficient to absorb the said coupons as they matured; but that since the 1st of January, 1871, the said city has utterly refused, and still refuses, even to recognize its obligation to pay said coupons.

And your orator further shows unto you honors that on 1st of April, 1870, six judgments, amounting, in the aggregate, to $12,363 $\frac{74}{100}$, founded upon coupons of the bonds issued as aforesaid by the city of Pensacola, were rendered in favor of persons other than your orator against

4 the said city of Pensacola by the circuit court of Escambia County, in said State of Florida; that executions were issued on said judgments, and that the said executions remain wholly unsatisfied, because the said city of Pensacola has no property, real or personal, out of which the said executions can be satisfied. And your orator alleges that the suits in which said judgments were rendered were commenced on the 21st of September, 1867.

And your orator further shows unto your honors that under the 30th

section of an act of the legislature of the State of Florida, entitled "An act to provide for the incorporation of cities and towns, and to establish a uniform system of municipal government in this State," approved August 6th, 1868, the mayor and board of aldermen, who held their offices under the charter of the 2d of March, 1839, above referred to as amended by the said acts of the 17th of December, 1850, and the amendatory act of the 3d of January, 1853, did, on the 23d of November, 1868, surrender the said charter of the 2d of March, 1839; and on the 25th of January, 1869, a new organization of said city, under the act of the 6th of August, 1868, was completed by the election of a mayor and board of aldermen.

And your orator further shows unto your honors that another act was passed by the legislature of the State of Florida, approved the 4th of February, 1869, entitled "An act to provide for the incorporation of cities and towns, and to establish a uniform system of municipal government in the State," the 30th section of which act is in the same terms as the 30th section of the act of the 6th of August, 1868, with the single exception that in the act of the 4th of Feby., 1869, nine months were allowed instead of six, as in the act of the 6th of August, 1868, for the re-organization of cities and towns; and both sections in both acts had reference exclusively to the re-organization of pre-existing corporations; that the 1st, 2d, 3d, 4th, 5th, 6th, and 7th sections of both of said acts of 1868 and 1869, having reference exclusively to the establishment of municipal corporations in communities where none previously existed, are substantially the same; that the mayor and board of aldermen of the city of Pensacola permitted the nine months allowed by the said 30th section of the act of 1869, to pass without re-organizing the city government, (if, indeed, any re-organization was necessary,) as had been done under the act of the 6th of August, 1868; and that on the 26th of December, 1870, a meeting of citizens residing within the corporate limits of the said city of Pensacola assembled, pursuant to a notice previously given, as provided by the 2d section of the said act of the 4th of February, 1869, and signed by the mayor and a majority of the board of aldermen, which meeting then and there proceeded to create what is now called by its creators a new and distinct corporation of the city of Pensacola, enjoying all the privileges of the old one but happily relieved from all its obligations.

And your orator further shows unto your honors that the following persons were the last who filled the offices of mayor and aldermen as provided by the 5th section of the charter of 2d March, 1839, to wit: Sewall C. Cobb, mayor; William M. K. Orthing, E. Haines, James Knowles, James W. Hall, I. Dennis Wolf, and George Pfeiffer, and that all these persons who were and are still corporators of said city of Pensacola, residents thereof, and citizens of the State of Florida, (with the exception of James W. Hall, who has removed from said State,) ceased to exercise their respective functions as mayor and aldermen under said charter on the 23d of November, 1868; that the last persons who filled the offices of mayor and aldermen under the re-organization of the corporation of the city of Pensacola under the act of the 6th of August, 1868, were F. C. Humphreys, mayor; Sewall C. Cobb, Augustus Dupont, Asa B. Munn, David Tobin, Benjamin Chandler, George E. Wentworth, and Salvader T. Pons, aldermen; and that all these persons who were and are corporators of said city of Pensacola, residents thereof, and citizens of the State of Florida, did on the 26th day of December, 1870, cease to exercise their respective functions as mayor and aldermen under the re-organization, pursuant to the provisions of the act of the 6th of August, 1868; and that the officers of what is claimed

to be the new corporation created on the 26th of December, 1870, are as follows: F. C. Humphreys, mayor; Heraldo Hernandez, George H. O'Neal, Augustus Dupont, Asa B. Munn, George E. Wentworth, George Pfeiffer, David Tobin, John C. Whiting, and William E. Anderson.

And your orator further shows unto your honors that the
6 present officers of the city of Pensacola refuse to pay or make provision to pay your orator's said coupons, because they insist that they represent and are the officers of a new and distinct corporation from the one which issued said bonds and coupons, and that said new corporation is not responsible for the debts and obligations of the old corporation of Pensacola; that the persons who last held office and exercised authority under the charter of the 2d of March, 1839, as well as those who last held office and exercised authority under the organization by virtue of the act of the 6th of August, 1868, insist that their authority has been superseded, the former by the latter, and the latter by the action of the corporation on the 26th of December, 1870, if not by the operation of the act of 4th of February, 1869; and that the corporation of the city of Pensacola refuse to take any steps whatever looking to the payment of your orator's just demands in the premises, under the delusion that all the debts and liabilities, including said bonds and coupons, have been discharged by the operation of law growing out of their own action.

All which actings, doings, and pretences are contrary to equity and good conscience, and tend to the manifest injury of your orator.

To the end, therefore, that the city of Pensacola may true, direct, and perfect answers make to the matters and things above set forth, and that your honors may render a decree in favor of your orator against the said city of Pensacola for the amount of the said four hundred and eighty-two (482) pas'-due coupons held by your orator, with interest thereon; and that the said city of Pensacola shall, upon its failure to pay the amount of said decree and costs, be required to levy a tax according to the provisions of the said charter of the 2d of March, 1839, as amended by the said acts of the 17th of December, 1850, and the 3d of January, 1853, upon the property, real and personal, within the corporate limits thereof sufficient to satisfy the said decree and the costs of this suit; and that in default thereof an officer of this court may be required to assess and collect such tax to an amount sufficient to satisfy said decree, the costs of this suit, as well as of assessing, collecting, and paying over said tax; and that your honors may grant
7 unto your orator such other and further relief as to your honors may seem mete and agreeable to equity and good conscience—

May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, to be directed to the said city of Pensacola, commanding it on a certain day and under a certain penalty to be and appear before the judges of this honorable court, at a time and place therein to be mentioned, to answer the premises and to abide such order and decree therein as to your honors shall seem proper and agreeable to equity and good conscience.

SAML. G. JONES,
Complainant.

RICHD. L. CAMPBELL,
Solicitor.

(Endorsements:) Saml. G. Jones vs. The City of Pensacola. Bill. Filed October 16th, 1871. M. P. de Rioboo, clerk. R. L. Campbell, solicitor.

Whereupon a writ of subpœna issued from the clerk's office aforesaid, which, with the return and endorsements thereon, is in the words and figures following:

The President of the United States to the city of Pensacola, a public corporation in and duly created by the laws of the State of Florida, greeting:

You are hereby commanded and strictly enjoined that, laying all other business aside, and notwithstanding any excuse, you personally
8 be and appear before the judge of our circuit court of the United States for the northern district of Florida, at the rule-day of said court, to be held at the clerk's office in the city of Pensacola, on the first Monday of December next, 1871, to answer to a bill of complaint exhibited against you in our said court by Samuel G. Jones, who is a citizen and resident of the State of Alabama, and to do further and receive what our said court shall have considered in that behalf, and this you are not to omit, under a penalty of five hundred dollars.

Witness the Hon. Salmon P. Chase, Chief-Justice in the United States Supreme Court, at the city of Pensacola, in said northern district of Florida, the sixteenth day of October, in the year one thousand eight hundred and seventy-one.

{ SEAL OF U. S. CIRCUIT COURT, 5TH CIRCUIT, NORTHERN DISTRICT OF FLORIDA. } M. P. DE RIOBOO, *Clerk.*

The defendant named in the foregoing subpœna is hereby notified and required to enter an appearance to the bill of complaint herein filed on or before the first Monday in December next, or the same may be taken as confessed.

This October 16th, A. D. 1871.

{ SEAL U. S. CIRCUIT COURT, 5TH CIRCUIT, NORTHERN DISTRICT OF FLORIDA. } M. P. DE RIOBOO, *Clerk.*

(Endorsements:) Saml. G. Jones vs. The City of Pensacola. Subpa. in chancery. Issued Octr. 16th, 1871. M. P. de Rioboo, clerk. Rich'd L. Campbell, solicitor.

9 James W. Hall resides in the State of Alabama, & therefore there is no service on him.

Served the above subpœna by delivering copies thereof to Sewall C. Cobb, as mayor, William McKenzie Orthing, E. Haines, James Knowles, J. Dennis Wolf, and George Pfeiffer, as aldermen of the said city of Pensacola, under the charter of the said city of 2d March, 1839; and also by serving copies of said subpœna on F. C. Humphreys, as mayor, Sewall C. Cobb, Augustus Dupont, Asa B. Munn, David Tobin, Benjamin Chandler, George E. Wentworth, and Salvador T. Pous, as aldermen, under the organization of the said city of Pensacola under the act of the legislature of the State of Florida of 6th of August, 1868; and also by serving copies of said subpœna on F. C. Humphreys, as mayor, Heraldo Hernandez, George H. O'Neal, Augustus Dupont, Asa B. Munn, George E. Wentworth, George Pfeiffer, David Tobin, John C. Whiting, and William E. Anderson, as aldermen, under the organization of the said city of Pensacola under the act of the legislature of

4th of February, 1869, at the city of Pensacola, in northern district of Florida, this 21st day of October, A. D. 1871.

SHERMAN CONANT,
United States Marshal, Northern Dist. Florida,
Per HARRY C. CAMPBELL,
Deputy.

Filed Oct. 28, 1871.

M. P. DE RIOBOO,
Clerk.

And afterwards, to wit, on the 30th day of December, in the year of our Lord one thousand eight hundred and seventy-one, the defendant, its solicitor, filed its demurrer to the bill of complaint of the complainant, in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Florida, in 5th judicial district.

SAMUEL G. JONES
vs.
THE CITY OF PENSACOLA.

The demurrer of the city of Pensacola to the bill of complaint
10 of Samuel G. Jones.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to the said bill, and for cause of demurrer showeth, that the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any discovery or relief from or against this defendant touching the matters contained in the said bill, or any of such matters. Wherefore and for divers other good causes of demurrer appearing in said bill of complaint, this defendant doth demur to the said bill, and to all the matters and things therein contained, and prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill; and he humbly prays to be hence dismissed with his reasonable cost, in this behalf sustained.

C. C. YOUGE,
Solicitor for Dft.

NORTH'N DIST. OF FLORIDA,
County of Escambia:

Personally appeared before me F. C. Humphreys, mayor of the city of Pensacola, who, being duly sworn, says the foregoing demurrer is not interposed for delay.

F. C. HUMPHREYS,
Mayor.

Sworn to and subscribed before me this 30th day of Dec., 1871.
M. P. DE RIOBOO, *Clerk.*

NORTHERN DISTRICT OF FLORIDA,
County of Escambia:

I hereby certify that, in my opinion, the above demurrer is well founded in point of law, and proper to be filed in said cause.

C. C. YOUGE,
Solicitor.

(Endorsements:) Samuel G. Jones vs. The City of Pensacola.
11 Demurrer. Filed Dec. 30, 1871. M. P. de Rioboo, clerk. C. C. Youge, dft. solicitor.

And afterwards, to wit, on the fifth day of February, in the year of our Lord one thousand eight hundred and seventy-two, the complainant, by his solicitor, filed the following order setting down cause for arguments on the complainant's bill and the respondent's demurrer in the words and figures following, to wit:

Rule-day of February, A. D. 1872.

In the circuit court of the United States for the northern district of Florida, western division.

SAMUEL G. JONES
vs.
THE CITY OF PENSACOLA. } In equity.

The above-stated case is hereby set down for argument on the complainant's bill and the respondent's demurrer.

RICHD. L. CAMPBELL,
Sol. for Complainant.

C. C. YOUGE, Esq.,
Solicitor for Complainant:

You are hereby notified of the entry of the above order in the above-stated case.

RICHD. L. CAMPBELL,
Sol. for Complainant.

FEBY. 5TH, 1872.

(Endorsements:) Samuel G. Jones vs. The City of Pensacola. Order setting case for hearing. Filed Feby. 5, 1872. M. P. de Rioboo,
12 clerk. R. L. Campbell, solr. for complt.

At a regular term of the circuit court of the United States for the fifth judicial circuit of the northern district of Florida, began and held at Pensacola on Monday, the fourth day of March, A. D. 1872.]

WEDNESDAY, *March 6th, A. D.* 1872.

Present, Hon. Philip Fraiser, judge, presiding; R. L. Campbell, solr.; C. C. Youge, solicitor.

SAMUEL G. JONES
vs.
THE CITY OF PENSACOLA. } Bill in chancery.

On motion of complainant's solicitor, it is ordered, that leave be granted to amend bill, and cause continued.

And afterwards, to wit, on the 9th day of March, in the year of our Lord one thousand eight hundred and seventy-two, the complainant, by his solicitor, filed the following notice of amendment of bill, in the words and figures following, to wit:

In the circuit court of the United States for the northern district of Florida, 5th judicial district.

SAMUEL G. JONES
vs.
CITY OF PENSACOLA. } In chancery.

To C. C. YOUGE, Esq.,
Solicitor for respondent in above case :

You will take notice that under leave of the court the following amendments have this day been made to complainant's bill in said case:

On the 4th page of said bill, referring to the $250,000 of bonds, the amendment is in these words: "which recite that they have issued in conformity with the 2d section of the said act, approved the 3d of January, 1853."

On the 6th page the amendment is in the following words:

13 "And your orator further shows unto your honor that on the 1st of April, 1870, six judgments, amounting, in the aggregate, to $12,363.74, founded upon coupons of the bonds issued as aforesaid by the city of Pensacola, were rendered in favor of persons other than your orators against the said city of Pensacola by the circuit court of Escambia County, in said State of Florida; that executions were issued on said judgments, and that said executions remain wholly unsatisfied because the said city of Pensacola has no property, real or personal, out of which said executions can be satisfied. And your orator alleges that the suits in which said judgments were rendered were commenced on the 21st of September, 1867."

Pensacola, March 9th, 1872.

RICHD. L. CAMPBELL,
Sol. for Complt.

(Endorsements:) S. G. Jones, vs. City of Pensacola. Notice of amendments. Copy of within served on C. C. Youge, March 9th, 1872. C. C. Youge, per A. E. Maxwell, attys.

And afterwards, to wit, on the thirtieth day of March, in the year of our Lord one thousand eight hundred and seventy-two, the defendant filed its demurrer, in the words and figures following:

Circuit court of the United States for northern district of Florida.

SAMUEL G. JONES
vs.
THE CITY OF PENSACOLA. }

The demurrer of the city of Pensacola to bill of complaint of Samuel G. Jones.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint to be true in such manner and form as the same are therein and thereby set

14 forth & alleged, doth demur thereunto; and, for cause of demurrer, sheweth that the said complainant hath not by his said bill made such a case as entitles him in a court of equity to any discovery or relief from or against this defendant touching the matters contained in said bill, or any such matters.

I certify that, in my opinion, the foregoing demurrer of the city of Pensacola, defendant, to the bill of complaint of Samuel G. Jones, is well founded in law & proper to be filed in the above cause.

C. C. YOUGE,
Solicitor for Dft.

NORTHERN DISTRICT OF FLORIDA:

E. Haynes, mayor of the city of *the city of* Pensacola, being duly sworn, says that he has read the foregoing demurrer, and that the same is not interposed for delay.

E. HAINES, *Mayor.*

Sworn to & subscribed before me this 30th day of March, A. D. 1872.
M. P. DE RIOBOO, *Clerk.*

(Endorsements:) Samuel G. Jones vs. The City of Pensacola. Filed March 30th, 1872. M. P. de Rioboo, clerk.

And afterwards, to wit, on the 6th day of May, in the year of our Lord one thousand eight hundred and seventy-two, the complainant, by his solicitor, filed in the clerk's office order setting down cause for hearing in the words and figures following, to wit:

Rule-day of May 6th, 1872.

In the circuit court of the United States for the northern district of Florida, in the 5th judicial circuit, at Pensacola.

13 SAMUEL G. JONES
vs.
THE CITY OF PENSACOLA. } In chancery.

It is ordered that the above cause be, and the same is hereby, set down for a hearing on the rule-day in June next, or at any special term of said court which may be held before then or thereafter, upon the complainant's amended bill and the defendant's demurrer thereto.

RICHD. L. CAMPBELL,
Sol. for Complt.

To Messrs. C. C. YOUGE & A. E. MAXWELL,
Sols. for Deft.:

GENTLEMEN: You are hereby notified of the entry of the above order this day.

6th May, 1872. RICHD. L. CAMPBELL,
Sol. for Complt.

(Endorsements:) Saml. G. Jones vs. The City of Pensacola. Filed May 6th, 1872. M. P. de Rioboo, clerk.

And afterwards, to wit, on the third day of February, in the year of our Lord one thousand eight hundred and seventy-three, the complainant, by his solicitor, filed in the clerk's office order setting down cause for hearing in the words and figures following, to wit:

Rule-day of February 3d, 1873.

In the circuit court of the United States for the northern district of Florida, in the 5th judicial circuit, at Pensacola.

SAMUEL G. JONES
vs.
THE CITY OF PENSACOLA. } In chancery.

It is ordered that the above cause be, and the same is hereby, set down for a hearing at the next regular term of said court upon the complainant's amended bill and the defendant's demurrer thereto.

RICHD. L. CAMPBELL,
Sol. for Complt.

16 To Messrs. C. C. YOUGE & A. E. MAXWELL,
Sol. for Dft.:

GENTLEMEN: You are hereby notified of the entry of the above order this day, 3d February, 1873.

RICHD. L. CAMPBELL,
Solr. for Complt.

(Endorsements:) Saml. G. Jones vs. The City of Pensacola. Filed Feb. 3, 1873. M. P. de Rioboo, clerk.

And afterwards, to wit, on Monday the ninth day of March, in the year of our Lord one thousand eight hundred and seventy-four, at a regular term of the circuit court of the United States for the fifth judicial circuit of the northern district of Florida, held at the city of Pensacola, the honorable Philip Fraser, judge, presiding, the following order was made:

Circuit court of the United States.

SAMUEL G. JONES
vs.
THE CITY OF PENSACOLA.

The above cause having been duly set down for hearing on demurrer to the complainant's bill, and the solicitors for the respective parties having been heard, and the questions of law arising on the said demurrer having been considered by the court, it is ordered, adjudged, and decreed that the said demurrer of defendant to the said bill of complaint be sustained and the said bill be dismissed.

And afterwards, to wit, on the said 9th day of March, in the year of our Lord one thousand eight hundred and seventy-four, the said complainant during the said term, in open court, applied for an appeal from the said decree to the Supreme Court of the United States, which said application is in the words, to wit:

SAMUEL G. JONES
vs.
THE CITY OF PENSACOLA.

Now, this day, came the defendant in the above-stated case, and in

open court prayed for an appeal to the Supreme Court of the United States from the decree of this court dismissing his bill of complaint, which appeal is hereby granted.

17 Opinion of the court, in the words and figures following, to wit:

United States circuit court, N. district of Florida, western division.

SAMUEL G. JONES
vs.
CITY OF PENSACOLA. } In equity.

The bill in this case is filed to enforce the payment of the contents of four hundred & eighty-two coupons of $17.50 each, for interest upon bonds issued by the city of Pensacola, in conformity to its charter, approved March 2d, 1839, and the amendments thereof.

The legality of the issue of said bonds is not denied.

A demurrer for want of equity is filed to the bill.

In support of the demurrer it is contended—

1. That the complainant has a plain, adequate, and complete remedy at law.

2. That said corporation has no legal authority to levy a tax.

3. That the corporation, the city of Pensacola, which issued the bonds, has been dissolved, and the defendant corporation, the city of Pensacola, is a new corporation, and is not responsible for the debts of the old.

The bill does allege that any assets of the old corporation remain out of which any part of the debt can be made, it will be well first to consider the last ground of demurrer; for if the debtor corporation no longer exists, then this court has no jurisdiction, there being no defendant against whom it can proceed to make or enforce a decree.

The 30th section of the act approved August 6th, 1868, (Laws of Florida, 1868, page 118,) provides that "it shall be lawful for any previously incorporated city to re-organize its municipal government under the provisions of this act by a voluntary surrender of its charter & privileges, and by an organization under this act." The city of Pensacola, as organized under its charter of March 2d, 1839, did voluntarily surrender such charter, and organized a city government by the same name, under the act of 1868, in compliance with the 30th section thereof.

The 32d section of the act of 1868 repeals all laws conflicting with said act.

The city of Pensacola having surrendered its charter under the act of 1839, did that surrender work a dissolution of such corporation?

18 Did the act of 1868 create a new corporation, or was an organization under that act a prolongation and continuation of the old?

One of the modes by which a corporation may be dissolved is by a surrender of its "franchise of being a body-corporate." Such franchise is created by charter, & the surrender of the "charter & privileges," as required by the act of 1868, is tantemount to a surrender of such franchise. Upon such surrender, accepted by the king in England, and authorized by the legislature in this country, a corporation is dissolved. Willcock on Corporation', part 1, sec. 852. When once dissolved it cannot be revived. Any subsequent grant must operate as a new creation.

Willcock on Corp., part 1, sect. 858 & 875. Though the surrender of the old charter and the organization under the new may have been so nearly together that the acts appear to be simultaneous, yet the right to organize under the new grant is made dependant upon the surrender of the old, & there must have been a moment when the thread of perpetuity was broken, and being once broken, the spinning of a new thread cannot make both one. The organization under the new charter must be considered a new creation, and not a revival of the old grant which was surrendered & repealed. Such was clearly the intention of the legislature as drawn from the words of the act.

Though such legislation may be reckless and inconsiderate, the language of the act is too plain to admit of any other judicial interpretation.

On the 4th of February, 1869, the legislature enacted another law, the 30th sec. of which is nearly identical with the 30th sec. of the act of August 6th, 1868, and provides that "it shall be lawful for any previously incorporated city or town to re-organize their municipal government, under the provisions thereof, by a voluntary surrender of their charters and privileges and by an organization under this act, and upon a failure of any incorporated town or city to accept the provisions of this act within nine months after its approval, all the acts vesting such city or town with power are hereby repealed."

19 The city of Pensacola, as organized under the act of 1868, did not surrender its charter and privileges and re-organize under the act of 1869; therefore, at the expiration of nine months after the approval of the said act of 1869, to wit, on the 4th day of November, 1869, the act of 1868, which vested said city with power, was repealed. The act vesting the city with power being repealed, the corporation was dissolved, for we can no more conceive of a corporation without a charter and without power than we can of human existence without life. The right to exercise corporate powers is the very life of a body-politic, and no corporation can exist without it.

The 32nd section of the act of 1869 further provides "that the act entitled 'An act to provide for the incorporation of cities and towns, and to establish a uniform system of municipal government in this State,' approved August 8th, 1868, and all laws and parts of laws conflicting with the provisions of this act, be, and the same are hereby, repealed."

The 30th section of the act of 1869 is in the nature of an exception to the 32nd section, and suspends the operation of the same for nine months in the case of previously incorporated towns and cities, and prolongs the existence of the corporation of such towns and cities for nine months after the approval of said act; but upon the failure on the part of such towns and cities to accept said act within nine months, all acts conferring corporate powers upon such towns and cities are repealed, and such repeal ipso facto dissolves the corporation.

A corporation may exist, but, from neglect to elect officers or from some other cause, may be incapable of exercising the power which the law has conferred upon it; then it is said to be suspended. But when all the powers with which it is clothed by the legislature is taken away, it can no longer exist. Such a repeal of all laws vesting it with power destroys its being and works its absolute dissolution. That the legislature may, and has power to, dissolve a municipal corporation there can be no doubt. "Towns being mere organizations for public purposes, are liable to have their public powers, rights, and duties modified or abolished at any time by the legislature." (East Hartford vs. Hartford Bridge Co.;

Dartmouth College case, 4 Wheaton, 629, 630; 16 Howard, 380; 24
20 Howard, 295; 2 Kent, 257.)

On the 3rd of February, three months after the said corporation ceased to exist, the legislature passed an act as follows:

"Whereas the legislature of this State, by the passage of an act entitled 'An act to provide for the incorporation of cities and towns, and to establish a uniform system of municipal government in this State,' approved February 4th, 1869, did not intend said act to affect the organization of any city or town made under or by virtue of an act entitled 'An act to provide for the incorporation of cities and towns, and to establish a uniform system of municipal government in this State,' approved August 4th, 1868; therefore, the people of the State of Florida, represented in senate and assembly, do enact as follows: Section 1. That all acts, doings, and proceedings made and had, or hereafter to be made and had, by any mayor, board of councilmen, or any other city officers, in any city of this State organized in pursuance of an act entitled 'An act to provide for the incorporation of cities and towns, and to establish a uniform system of municipal government in this State,' approved August 4th, 1868, and while in the performance of their duties under said organization, are hereby declared to be legal and valid."

There is no act of the mentioned which was approved August 4th, 1868. The act intended is the act of that title approved August 6, 1868.

The act of February 3d, 1870, is a statute of explanation, and such statutes "shall be continued only according to the records, and not by any manner of intendment, for it is incongruous, it is said, for an explanation to be explained." "When one act is made explanatory of another, the court cannot carry the explanation farther than is expressed in that act; it must be construed precisely, and no new interpretation can be made of it." (Dwarris on Statutes, 730.)

The 13th section of the 4th article of the constitution of this State provides that "the enacting clause of every law shall be as follows: The people of the State of Florida, represented in senate and assembly,
21 do enact as follows." The preamble of an act can in no sence have the force of a law. If, therefore, we construe the enacting clause of this act strictly by its words, it simply declares legal and valid all acts, doings, and proceedings of the mayor, councilmen, or other officers of the city of Pensacola, as organized under the act of August 6th, 1868, made and had, or thereafter to be made and had, by said officers, and while in the performance of their under said organization.

Now we have seen that the said organization ceased to exist on the 4th day of November, 1869—said officers cannot be held to be in the performance of their duties after that time under said organization; and we have also seen that this act cannot revive the said organization, and cannot be so construed. The defendant corporation of the city of Pensacola was organized on the 26th day of December, 1870, "under the provisions of the act of 1869 relating to communities in which there were no pre-existing corporations." It is the inevitable conclusion, then, that the defendant corporation, the city of Pensacola, is not the same corporation which issued the bonds in question, and is not responsible for them. "If the old corporation be revived, all its rights and responsibilities are revived with it; but if the grant operate as a new creation, it cannot be subject to the responsibilities of the old corporation." (Angell and Ames on Corp., sec. 780; Colchester vs. Seaber, 3 Burrowes, 1866; The King vs. Passmore, 3 T. R., 240, et seq.) In Mumme vs. the Potomac Company, in delivering the opinion of the court, Mr. Justice

Story says: "A corporation, by the very terms of its political existence, is subject to dissolution by a surrender of its corporate franchises, and by a forfeiture of them for a wilful misuse and non-user. Every creditor must be presumed to understand the nature and incidents of such a body-politic, and to contract with reference to them." For there is
no pretence to say that a scire facias can be maintained, and a
22 judgment had thereon, against a dead corporation, any more than against a dead man." 8 Pet., 286, 287.

The city of Pensacola, the corporation which issued the bonds and created the debt which is the subject-matter of this suit, has been twice superseded and may be said to be doubly dead.

There is therefore no party in being against whom any proceedings can be had to recover the debt. This court can make no decree for its payment upon the case made by the bill. The demurrer must be sustained and the bill dismissed for want of equity.

PHILIP FRASER,
Judge.

And afterwards, to wit, on the 9th of September, in the year of our Lord one thousand eight hundred and seventy-four, the said Samuel G. Jones, the complainant, filed his bond, which, with the approval thereof, is in the words and figures following, to wit:

United States circuit court, 5th judicial circuit, northern district of Florida.

Know all men by these presents, that we, Samuel G. Jones, of the State of Alabama, and Thomas F. Parker and Holden Evans, of Escambia County, State of Florida, are held and firmly bound unto the city of Pensacola, State of Florida, in the sum of one thousand dollars, for the payment of which well and truly to be made we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents.

Given under our hands and seals this first day of May, A. D. 1874.

The condition of the above obligation is such that, whereas the said circuit court on the ninth day of March, A. D. 1874, did by a final order
and decree dismiss a bill in equity filed by the said Samuel G.
23 Jones against the said city of Pensacola; and whereas the said Samuel G. Jones, is order to obtain a reversal of said order and decree, hath prayed for and obtained and appeal to the Supreme Court of the United States: Now, therefore, if the said Samuel G. Jones shall prosecute his appeal to effect, and shall answer all damages and costs if he shall fail to make good his said appeal, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

SAML. G. JONES. [SEAL.]
THOS. F. PARKER. [SEAL.]
H. EVANS. [SEAL]

The foregoing bond is approved & the appeal allowed this Sep. 2, 1874.

W. B. WOODS,
U. S. Judge.

I, Marcimo P. de Rioboo, a commissioner of the United States in and for the northern district of Florida, at Pensacola, do hereby certify that on this day, in the city of Pensacola, county of Escambia and State of

Florida, personally appeared before me, Samuel G. Jones, Thomas F. Parker, and Holden Evans, who are personally known to me as the parties referred to in the foregoing writing, and then and there did, in my presence, sign and seal the foregoing instrument of writing.

In testimony whereof I have hereunto set my hand and affixed my seal this first day of May, A. D. 1874.

M. P. DE RIOBOO, [L. S.]
U. S. Commr., Nor. Dis. Fla., at Pensacola.

UNITED STATES OF AMERICA,
Northern District of Florida:

Personally appeared before me, M. P. de Rioboo, a commissioner of the United States in and for the northern district of Florida, at Pensacola, Thomas F. Parker and Holden Evans, who, being duly sworn, depose and say that they and each of them, after the payment of all their
24 just debts and other liabilities, and of all exemptions allowed by law, are worth the penalty of the foregoing bond, to wit, the sum of one thousand dollars.

H. EVANS.
T. F. PARKER.

Sworn to and subscribed before me this first day of May, A. D. 1874.
M. P. DE RIOBOO, [L. S.]
U. S. Commr., Nor. Dis. Fla., at Pensacola.

(Endorsement:) Filed September 9th, 1874. M. P. de Rioboo, clerk.

UNITED STATES OF AMERICA,
Northern District of Florida, Western Division:

I, Maximo P. de Rioboo, clerk United States circuit court in and for the northern district of Florida at Pensacola, in said division, do hereby certify that the foregoing pages, numbered from one to twenty-four, inclusive, constitute a true copy of all the proceedings and a correct transcript of the record of the judgment in the case of Samuel G. Jones, complainant, and the City of Pensacola, defendant, as appears upon the files and records of my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this the first day of October, in the year one thousand eight hundred and seventy-four.

[SEAL.] M. P. DE RIOBOO, *Clerk.*

(Indorsement on cover:) No. 110. Samuel G. Jones, appellant, vs. The City of Pensacola. N. Florida, C. C. U. S. Filed 10th October, 1874.

In Supreme Court of the United States,

OCTOBER TERM, 1876.

SAMUEL G. JONES, APPELLANT,

No. 110.] vs.

THE CITY OF PENSACOLA, APPELLEE.

On Appeal from the Circuit Court of the United States for the Northern District of Florida.

Appellant's Brief

In Supreme Court of the United States,

OCTOBER TERM, 1876.

SAMUEL G. JONES, APPELLANT,

No. 110.] vs.

THE CITY OF PENSACOLA, APPELLEE.

On Appeal from the Circuit Court of the United States for the Northern District of Florida.

STATEMENT OF FACTS.

The appellant Jones, a citizen of Alabama, exhibited his bill in the Circuit Court of the United States for the Northern District of Florida, against the City of Pensacola, a municipal corporation created by the laws of Florida, praying the court to render a decree in his favor for the amount due upon certain coupons of bonds issued by the defendant in aid of the Alabama & Florida Rail Road Company of Florida; that upon failure of the defendant to pay the amount of the decree and costs, defendant be required to levy a tax according to certain acts, set forth in the bill, sufficient to pay the decree; that in default of this, the court appoint an officer to assess and levy and collect a tax and pay it over to satisfy the decree, and further praying for general relief. (See prayer on page 4 of printed record.)

The bill alleges that the City of Pensacola, at that time a pre-existing corporation, was re-chartered by an act of the territorial legislature of Florida, approved March 2d, 1839, and after reciting various acts and sections of acts showing

the power of the corporation, and the various changes made from time to time, alleges that by an act of the General Assembly of Florida, approved January 3d, 1853, amendatory of an act of December 17th, 1850, the mayor and aldermen of the city, with the consent of a majority of the corporation, &c., were authorized and empowered to subscribe any amount of money to any rail road leading from the city of Pensacola, and for the purpose of procuring the amount of the subscription, the city was empowered to borrow the same and levy a tax of not exceeding two per cent., &c.

The bill further states, that the Alabama & Florida Rail Road Company was chartered in 1853, for the purpose of constructing a rail road from some point on Pensacola Bay (Pensacola being the point selected) to a point on the State line, where it connects with a rail road from the City of Montgomery in the State of Alabama, then known as the Alabama & Florida Rail Road of Alabama.

The bill further states, that under the act recited the City of Pensacola subscribed $250,000 of the capital stock of said rail road company, and in payment executed and delivered to said rail road company (500) five hundred bonds for $500 each under its corporate seal, reciting that the bonds were issued in conformity with the second section of the act of 1853, payable to said rail road company or bearer, with coupons for payment of interest at the rate of seven per cent. per annum, payable semi-annually at such bank in the city of New York as the city treasurer might direct; that these bonds were delivered as the work on the rail road progressed at various times between the first of January, 1857. and the first of July, 1861, inclusive; that the city never made provisions for the payment of the coupons at any bank in New York or elsewhere, or at any place or in any way; that up to 1871 the city received the coupons in payment of taxes, but the taxes assessed were never sufficient to absorb the coupons; that since January 1st, 1871, the city has utterly refused, and still refuses, even to recognize its obligation to pay said bonds or coupons.

The bill further alleges, that the complainant is the lawful

holder of 582 of the coupons for $17 50 each, due before the filing of the bill at various dates set forth; and that on April 1st, 1870, in suits commenced September 21st, 1867, judgments were rendered against the City of Pensacola, in favor of persons other than complainant, for $12,503 74 upon coupons upon said bonds, and that execution issued on said judgments remain unsatisfied, "because the City of Pensacola has no property, real or personal, out of which said executions could be satisfied."

The bill further alleges, that under the 30th section of "an act to provide for the incorporation of cities," &c., approved August 30th, 1868, the mayor and board of aldermen, who held office under the charter of 1839 as previously amended, surrendered the charter, and on the 25th January, 1869, there was a new organization under the act of 1868. In 1869 another act was passed by the legislature of Florida, similar to the act of 1868, under which a new organization was effected, but after nine months had elapsed from the passage of the act.

The bill then sets forth the names of the persons holding the various municipal offices, and when they ceased to act, &c., and shows that no persons are filling the offices of the corporation, or claiming the right to do so, save those in office under the re-organization effected in 1870.

The bill further alleges, that the present officers refuse to pay, or make any provision whatsoever to pay, orator's coupons, because they insist that the present "City of Pensacola" is a new and different corporation from the old one, and not responsible for its debts, and that said corporation utterly refuses to take any steps looking to the payment of orator's demand.

The defendant put in a general demurrer, (see page eight, printed record,) and the court sustained it and dismissed the bill, (see page ten, printed record.)

ASSIGNMENT OF ERROR.

Samuel G. Jones
vs.
The City of Pensacola. } Supreme Court of the United States, October Term, 1876.

Now at this term, comes the said Samuel G. Jones, by his attorney, Samuel F. Rice, and says that in the record and proceedings aforesaid there is manifest error in this, to-wit:

1st. The court below erred in sustaining the demurrer to the bill.

2d. The court below erred in dismissing the bill.

3d. The court below erred in denying any relief.

4th. The court below erred in not rendering a decree against defendant for the amount due upon the demand set forth in the bill.

5th. The court below erred as shown by the final decree.

And the said Samuel G. Jones prays that the decree aforesaid, sustaining the demurrer to complainant's bill and dismissing the same, may be reversed, annulled, and altogether held for naught, and that he may be restored to all things which he hath lost by occasion of said decree.

SAMUEL F. RICE,
Attorney for Appellant.

ARGUMENT.

The appellant contends:

1st. That the City of Pensacola, which was at that time a city existing under a special legislative charter (the act of 1839 and its amendments) contracted the debt sued on: That by subsequent surrender of the charter of said city, or by force of the last part of section 30 of the "Act to provide for the incorporation of cities and towns, and *to establish an uniform system of municipal* government in this State," approved February 4th, 1869, [hereinafter set forth,] the said city ceased to exist, and that hence no *action at law* will lie against it or against the new corporation of the same name, which came into existence under the general act of 1868 or the general act of 1869, to enforce debts created and due by the old corporation.

2d. That the power given the old city to tax for payment of bonds issued in payment of the stock subscribed, became part and parcel of the contract of the old corporation, here sought to be enforced, and indestructible by subsequent destruction or change of the old municipal corporation. That this power to tax remained *a trust* which those equitably interested therein can demand to be enforced in a court of equity, although there may be no trustee of whom the execution of the trust can be demanded at law, or no trustee existing after the dissolution of the old corporation.

The demurrer, which is general, admits every fact properly pleaded and is a waiver of any formal defects. If the complainant below was entitled to any relief, a demurrer to the whole bill is bad.

Livingston v. Story, 9 Peters, 633.

The Federal courts will take judicial notice without proof, of the laws of the several States and also of their laws while in a territorial condition.

Pennington v. Gibson, 16 Howard, 65.

Fremont v. United States, 17 Howard, 542.

The charter of a public municipal corporation, will be judicially noticed.

State v. Aldermen, &c., 11 Humphries, 212.

Smoot v. Mayor, 24 Ala. 121.

The various statutes and laws necessary to be referred to in this argument, are as follows:

The act approved January 3d, 1853, authorizing the subscription and taxation to pay it, is as follows:

"SEC. 2. Be it further enacted, That the mayor and board "of aldermen of the City of Pensacola, with the consent of a "majority of the corporation composing said city, be and they "are hereby authorized to subscribe in the name of the City "of Pensacola, any amount of money which they may deem "necessary to any plank-road or railroad leading from the "City of Pensacola, and for the purpose of procuring the "amount of subscription the said City of Pensacola shall

"have power to borrow the same, and shall have power to "impose a tax on real estate in said city at a rate not exceed- "ing two per centum on the assessed value of such proper- "ty."

An act of the Florida Legislature, approved August 6th, 1868, entitled "An act to provide for the incorporation of cities and to establish a uniform system of municipal government," was passed, it is presumed, to carry out the Constitutional mandate that "the Legislatare shall establish a uniform system of county, township and municipal government."—(Art. IV. § 21, Constitution of 1868.)

This act provided in substance that the male inhabitants of any hamlet, village or town in the State, not less than one hundred in number, might establish for themselves a municipal government, with corporate powers and privileges, under the provisions of this act, and then proceeded to declare how such municipal government should be organized, and what their powers and liabilities should be, &c.

Section 30 of this act was as follows: Be it enacted, &c., "That all the powers and privileges conferred in and by this act, may be exercised by any city or town, within the limits of this State, heretofore incorporated, and it shall be lawful for any previously incorporated city or town to reorganize their municipal government under the provisions thereof, by a voluntary surrender of their charter and privileges, and by an organization under this act; *and upon a failure upon the part of any incorporated town or city, to accept the provisions of this act within six months after its approval, all the acts vesting such city or town with power are hereby repealed.*"

(See Laws of Florida, 1868, p. 118.)

Afterwards the Legislature passed an act, approved February 4th, 1869, having the same title as the act referred to, and having in view the same general purpose. The thirtieth section of this last act is identical with the thirtieth section of the act of 1868 (which is hereinbefore set out), save that *nine* instead of *six* months was fixed as the period within which cities and towns, already incorporated, were to accept

the provisions of the act and in default of which all acts vesting them with power were repealed. (See Laws of Florida, 1869–71, p. 28.) This latter act also repealed the act of the same title approved August 30th, 1868.

To ascertain whether a charter creates a new corporation, or merely continues the existence of an old one, or what effect a repeal has, the plain and positive enactments of the statute and not collateral facts, must be looked to and must govern. The fact that the names are the same, that the corporators are nearly all the same, &c., is not at all conclusive.

Bellows v. Bank, 2 Mason, C. C. 41.

Wilson v. Tesson, 12 Indiana, 285.

Union B'r R. R. Co. v. E. T. & Ga. R. R. Co., 14 Ga., 327.

The legislative intent in the two acts mentioned is plain. The words used are not of doubtful import. They are as follows: "Upon a failure upon the part of *any incorporated town* or city to accept the provisions of this act, within nine months after its approval, *all the acts vesting such city or town with power are hereby repealed.*"

The corporation is a mere legal abstraction—a mere legal entity. What act can it perform, what power has it, when *all the acts vesting it with power are repealed?* Without some law authorizing it to exist, how can there be a corporation? Such a thing is a legal impossibility.

The purpose of the acts of 1868 and 1869 is plain. The Constitution of Florida provides "that the Legislature shall establish a uniform system of county, township and municipal government." Constitution of 1868, Art. IV, § 21. To conform to the Constitution, the Legislature passed these acts. It might have declared that all towns and cities should have only the powers and rights given in these acts, and have imposed these powers upon them, without regard to their action or wishes. The Legislature, however, had the discretion to pass the general laws, and leave it optional with the towns already incorporated to take advantage of them, *or cease to exist as corporations.* It was plainly the purpose of the Legislature, under the laws which it passed, that if incorporated

towns did not accept the terms of the general law, they should cease to exist. If this were not so, the cities incorporated *before* the passage of the general laws, by refusing to accept their provisions would still exist under their old charters and the system of municipal corporations existing would not be *uniform*.

If after the charter of Pensacola was repealed, its citizens formed an incorporation under the general law (as though Pensacola had never been incorporated), the corporation thereby created, if a lawful organization, is certainly a *new* corporation. To hold that such organization was but the revival of the old corporation, would be to add the following proviso to the end of the 30th section of the act of February 4th, 1869—*provided*, that although "all acts vesting power" in any incorporated city (which failed to accept the provisions of this act within nine months) are "repealed" by this act, *yet if after such powers are repealed*, the citizens of the formerly incorporated town, organize a municipal government under the general provisions of this law, (for municipal organization where none previously existed,) *the corporation thus created shall be the same corporation in law* as the one whose powers were taken away by the repeal of the acts giving them power, for their failure to act within the time prescribed.

See Wilson v. Tesson, 12 Indiana, 285.

3 Howard, 326; 13 Howard, 429; 6 Indiana, 146; 16 Barbour, 16; 14 Ga. 327.

Erie & North East R. R. Co. v. Casey, 26 Penn. St. Reports, 287.

Municipal corporations are completely subject to the will of the legislature. It may destroy them at pleasure, and there is no limit to the legislative power in this respect, save that it can not kill or impair vested contract rights acquired against such corporations.

Cooley, Cons. Lim. p. 192 (edition of 1868,) note 2.

Dillon on Municipal Corporations, vol. 1, § 114.

See, also, U. S. v. R. R. Co., 17 Wallace, 328-9.

A repeal of a municipal charter does not violate the obligation of contracts—(Mumma v. Potomac Co., 8 Peters 281.)

These survive, and may be enforced after the repeal of the charter.

Dillon on Municipal Corporations, vol. 1, § 114.

The power to repeal and the purpose to repeal being plain, what is the result? The city of Pensacola, chartered under the acts of 1839 and amendments, ceased to have any corporate existence, and ceasing to have corporate existence can not be sued, certainly not at law.

EFFECT OF DISSOLUTION OF CORPORATION.

Upon the dissolution of the corporation in any mode, all suits pending for or against it abate.

Greely v. Smith, 3 Story, 657.

Merrill v. Suffolk Bank, 31 Maine, 17–57.

Ingraham v. Terry, 11 Humph., 572.

Saltmarsh v. Planters' Bank, 17 Ala. 761.

Paschall v. Whitsett, 11 Ala.

It has no longer any legal existence, and can not sue or be sued; certainly not in a court of law. "When a corporation surrenders its charter * * it becomes *defunct* and the suit abates, unless the legislature by some act saves a right of action."

3 Story, C. C., 657.

Davis v. Fairbarron, 3 Howard, 636.

Norris v. Crocker, 13 Howard, 429.

Penn. & Ind. R. R. Co. v. Bradshaw, 6 Ind. 146.

Dexter & Lime P. R. Co. 16 Barbour, 15.

Union Br. R. R. Co. v. E. T. & Ga. R. R. Co. 14 Ga. 327.

The corporation having been dissolved, the appellant has no remedy at law. Whom is he to sue? The only remedy

IS IN EQUITY.

"The jurisdiction of the court of equity to reach the property of a debtor justly applicable to the payment of his debts, even when there is no specific lien on the property, is *undoubted*. It is a very ancient jurisdiction. * * *Unless the suit relates to estate of a dead person*, the debt must be established by some judicial proceedings, and it must generally be

shown that all legal means for its collection have been exhausted."

Public Works v. Columbia College, 17 Wallace, 530–1.

It is no valid objection to orator's bill that his demand was not reduced to judgment. He could not get a judgment at law because there was no legal entity to sue. His debtor corporation has ceased to exist. Independently of this,—his demand not sounding in damages merely—his equities give him a right to call upon a court of equity without having reduced his debt to judgment.

Pharis v. Leachman, 10 Ala. 677.

17 Wallace, 530.

Such a defunct corporation has always been subject to the ancient jurisdiction of equity as to trusts and administration of estates

Foster v. Essex Bank, 16 Mass. 70– 74.

"*The withdrawal of the charter*—that is, the right to use the corporate name for the purpose of suits before the ordinary tribunals—*is such a substantial impediment* to the prosecution of the rights of the parties interested, whether creditors or debtors, *as would authorize equitable interposition in their behalf*, within the doctrine of chancery precedents."

Bacon v. Robertson, 18 Howard, p. 486.

There is, however, another specific ground upon which the equity of the bill may be rested. The remedy at law—if there be one—is not adequate. "It is not enough that there is a remedy at law. It must be plain and adequate, or in other words, as practical and efficient to the ends of justice and its prompt administration, as the remedy in equity."

Payne v. Hook, 7 Wallace, 430.

Boyce Ex'rs v. Grundy, 3 Peters, 210.

The legislature may destroy a corporation, but it can not destroy or impair the obligation of contracts made by such defunct corporation, or repeal a law authorizing special taxation for the payment of a debt it was authorized to contract. Such power remains—is a *trust* to be exercised for the benefit of the creditor, and in equity will be regarded as "*the property*" of the defunct corporation to be administered for

the satisfaction of its debts.—Beloit v. Morgan, 7 Wallace, 613. Otherwise the constitutional inhibition against violating or impairing the obligation of contracts, would be disregarded.—Von Hoffman v. Quincy, 4Wallace. 535. No repeal of a charter can destroy contract rights of creditors.

Curran v. Arkansas, 15 Howard.

Thompson v. Lee County, 3 Wallace, 327.

Butz v. Muscatine, 8 Wallace, 583.

And, if as is contended by the city of Pensacola, the acts of the legislature have so altered or destroyed the old corporation, that it is unable any longer to administer its trust—*the taxing power*—the difficulty is easily answered by JUSTICE GRIER, (in Girard v. Philadelphia, 7 Wallace, 13) who says: "If this were true, the only consequence would be, not that the charity or *trust should fail*, but that the *Chancellor should substitute another trustee.*" In such a case equity will always provide a trustee.

Bacon v. Robertson, 18 Howard, 312.

The present corporation is the only necessary and proper party defendant to this bill. It has taken possession of the municipal government. It is the medium through which the city collects taxes. To it the State delegates a portion of its police power. The law authorizing the taxation provides that it shall be collected "in the same manner as other taxes." The taxes to be collected concern the inhabitants whose organ this present corporation is. It controls the property sought to be taxed. Its officers are, perhaps, the most suitable, and it may be only instrumentalities by which a court of equity can supply a trustee. It must be that the present corporation is such a representative of the old as may be sued in equity, at least to ascertain the amount due by the old corporation and lay the foundation for proceedings to collect it. The individual inhabitants who composed the old corporation are certainly not its representatives or successors. If this be not the case, the repealing act kills the old corporation and kills its debt; for, although a contract inviolable exists, the legislature has prevented any suit to

enforce the contract or ascertain the amount due on it, and cut off *all* remedy for its enforcement. Such proceedings "*impair*" the obligation of the contract, and no alteration of the "remedy," which impairs the obligation of the contract, can stand in the way of the Constitution.

Commissioner's Court v. Rather 48 Ala. 447, and authorities there cited.

White v. Hart, 13 Wallace, 686.

The present case is essentially different from that of Rees v. City of Watertown, 19 Wallace, 124. Here there is "a *want* of a *remedy*" at law. There there was only the "*inability to obtain the fruits of a remedy*," which was "*in law and in theory* complete."

Conceding that the Court, in the absence of an express statute, can not appoint *its own officer* to levy, assess and collect a tax, it does not follow that the Court can not appoint the *officers of the present corporation*, (who have authority to levy and collect taxes,) and compel them to levy and collect a sufficient tax to pay appellants. The act of 1853, authorizing such taxation, is a contract, not repealable, and is sufficient authority for the present officers. In this particular, also, this case is distinguished from Rees v. Watertown.

It is respectfully suggested that the Court below, in denying *any* relief upon the facts stated in the bill, effectually repealed the constitutional prohibition against laws impairing the obligation of contracts.

What avail is that provision, if the many millions of corporate indebtedness of the cities and towns in Florida can be extinguished by so simple a process as repealing their charters?

SAM'L F. RICE,
Attorney for Appellant.

IN THE

Supreme Court of the United States.

SAMUEL G. JONES, Appellant,
vs.
THE CITY OF PENSACOLA. } In Chancery.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR NORTHERN DISTRICT OF FLORIDA.

C. C. YONGE, For Appellee.

IN THE
Supreme Court of the United States.

SAMUEL G. JONES, Appellant,
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THE CITY OF PENSACOLA. } In Chancery.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR NORTHERN DISTRICT OF FLORIDA.

C. C. YONGE, For Appellee.

The defendant demurs to the complainant's bill on the following grounds :

First---That the subject matter is not within the jurisdiction of a court of equity.

Second—That the complainant seeks to compel the levy of a tax uuder an unconstitutional law.

Third—That the bonds described in the bill of complaint are not the bonds of the defendant, but of another corporation of the same name, which was repealed and dissolved by the Legislature of Florida before the institution of the suit.

First---That the subject matter is not within the jurisdiction of a court of equity. The first fundamental rule is, that the bill shall state a case within the appropriate jurisdiction of a court of equity.

Story, Eq. Pleading, sec. 10.

Trial by jury is a constitutional right, and equity will not disturb it.

Hipp vs. Babin 19, How. 278.

Such objection is regarded as jurisdictional, and may be enforced by the court *sua sponte*.

Towle vs. Lavanson, 5 Peters, 496.

The allegations of the bill are, that the complainant holds certain evidences of indebtedness of the defendant; that under the legislation of the State the defendant was authorized to levy a tax to discharge this indebtedness; that the defendant denies its liability to pay the said indebtedness, and has made no provision for it, and has no means to pay it without levying a tax.

It is submitted that a court of law is entirely competent to administer all the relief the complainant is entitled to under these allegations. An action of debt on these coupons would settle the question of indebtedness of the defendant, and should a judgment be obtained against the defendant the plaintiff would be entitled to the process of execution to compel payment. The allegation of insolvency or want of means of the defendant is not a sufficient reason for abandoning the remedy the law courts offer the complainant. *Non constat*, that though without the means when the bill was filed, that the defendant would be able to meet the execution when it should be issued. The appropriate evidence of the inability of a defendant to discharge a debt is by a return of *nulla bona*.

Should such a return be made, or even should the inability of the defendant to satisfy the complainant's execution be made to appear in any other satisfactory manner, there would still be no reason to go into a court of equity. The means adopted by municipal corporations to raise money for corporation purposes is by taxation, and it will be time enough to ask the levy of a tax to pay the claim of the complainant when the existence of this claim has been established. Should the defendant, after the establishment of its indebtedness by judgment, fail and refuse to provide means to discharge it, a court of law would still be the appropriate tribunal to compel the provision of means by writ of mandamus to levy a tax for such purpose.

See Wakely vs. City of Muscatine, vi Wal., 481.

Reggs vs. Johnson county, vi Wal., 193.
Rees vs. Watertown, 19 Wal., 117.

If particular circumstances are relied on to give equity jurisdiction, they must be stated. For illustration see

Story Eq. p. 473, '74, '75, '76.

No sufficient circumstances are stated by complainant. When analyzed they amount only to the following:

1st—That the defendant denies its indebteness. This would be expressed in a court of law by a plea of *non est factum.*

2d—That the defendant has no property on which to levy the plaintiff's execution. The appropriate mode of determining this, as already stated, would be for the sheriff to make his return of *nulla bona.*

3d—That the complainant *apprehends* that the defendant will not levy a tax to pay the debt if judgment should be obtained. The complainants cannot know what action the defendant would take in such event, and the jurisdiction of a court of equity cannot be made to defend up such apprehension. When equity jurisdiction is claimed to depend on discovery, it must clearly appear that it is not a pretence to acquire jurisdiction.

Story Eq. Pl. sec. 74.

If the prevention of multiplicity of suits be relied on, it must also clearly appear that such will be the result. This is not made to appear in this case, but only that the complainant apprehends such result. The case of Morgan vs. Beloit City and Town, 7 Wal., 617, differs from this case in the following particulars:

1st—A judgment had already been obtained at law in that case.

2d—The statute charged a portion of the debt for which the judgment had been rendered to the city of Beloit, which had previously been the debt of the town, according to the assessment of taxes, and a suit at law could not be maintained against the city of Beloit for the unadjusted proportion, because the town was a necessary party, and the adjustment of its proportionate amount depending on accounts and computations founded on the assessment rolls, could not be made in an action of law.

3d—The court of equity having jurisdiction for the adjustment of the amount of the debt, between the city and the town, entertained the cause for further relief to prevent circuity of action, as

otherwise another suit would have been necessary to recover the amount when adjusted from the city. In this case the rule is reversed. The complainant comes into a court of equity, asking a remedy purely legal, and which in a court of law is full, adequate and complete; and being in a court of equity for this purpose, to wit, to obtain a judgment for a debt, prays that defendant be directed to levy a tax to pay it.

In the Beloit case, the judgment that had been obtained was between the same parties. In this case the judgments spoken of as having been obtained were in cases in which neither the plaintiff or defendant are the same. The plaintiff is different, as the name indicates; and the defendant, though of the same name, claims to be a different corporation, as we will hereafter see.

Second—That the plaintiff seeks to compel the levy of a tax under an unconstitutional law.

1st—Because the law authorizing the levy of the tax to pay the bonds, authorized and directed an unequal tax.

2d—The tax is for the promotion of a private enterprise.

The acts of 1850 and 1853 referred to in complainant's bill, amendatory of the act of 1839, incorporating the city of Pensacola, and which are relied on as conferring authority to issue the bonds held by the complainant, and authorizing the levy of a tax to pay them, are in violation of the Constitution of the State of Florida, which is in the following language: "The General Assembly shall devise and adopt a system of revenue, having regard to an equal and uniform mode of taxation, to be general throughout the State."—[Constitution of 1848.] A similar provision is contained in the Constitution of 1868, now in force.

The language of the act of 1853 above referred to is, "That the Mayor and Aldermen of the city of Pensacola, with the consent of a majority of the corporation composing the city, are hereby authorized to subscribe in the name of the city of Pensacola, any amount of money which they may deem necessary to any plank road or railroad leading from the city of Pensacola; and for the purpose of procuring the amount of subscription, the said city of Pensacola shall have power to borrow the same, and shall have power to impose a tax on the *real estate* in said city, at a rate not exceeding two per cent. on the assessed value of

said property; and that the payment so imposed may be enforced in the same manner as in other cases."

The inequality of this tax is in being restricted to real estate.

This court in the case of Gilmore vs. the City of Sheboygan, 2d Black 510, has said that "it is beyond the constitutional power of the Legislature to make any discrimination" in taxing real and personal property. "Property must be wholly exempted or not exempted at all. The complainant seeks to evade the operation of this reeognized doctrine by asking for the levy of a general tax on real and personal property. But when a law is relied on for authority to contract a debt and levy a tax to pay it, such an authority must be strictly followed or abandoned.

Sec. 17, Gratt 176.

In the case of Clarke vs. Davenport, 14, Iowa, the court says: "It is true of the political divisions of the State, as it is of the State at large, that legislative authority must be shown for every levy of taxes." See also

Mays vs. Cincinnati, 1 Ohio, N. S., 273.

"Those who assume to seize the property of the citizen for satisfaction of a tax, must be able to show that that particular tax is authorized either by a general or special law."

M. S. vs. Mayor of Burlington, 2 Am. Law Reg. N.S. 394.

A municipal corporation has no inherent power to levy taxes. See The People vs. The Town of Salem, 4 American Rep., 416. Dillon on Corp., 577.

"All their powers are delegated by the State, and when the citizen is called on to pay a tax the officer must show his warrant in the law."

Cooley Const. Lim., 517, 520.

The only authority to levy a tax to pay these bonds is the act of 1853, restricting the tax to real estate.

While considering the terms of this act it is perhaps not out of place to call attention to the fact that it does not authorize an *annual tax*, as the complainants assume. The language is that "for the pnrpose of procuring the amount of subscription the city shall have power to borrow the same, and shall have power to impose a tax not exceeding two per cent. on the assessed value of said property." The intention seems to have been, that the

city was authorized to borrow a sum of money, not to issue bonds, and to raise the means to pay it at once by a single assessment. Acts of this class which authorize the seizure of the property of the citizen are strictly construed, and the corporation can go no farther than expressly authorized. I admit that the power to borrow money would authorize the issue of bonds, for that is a legitimate and usual mode of borrowing money, but but the means provided to pay the bonds must be strictly pursued, and language employed to confer the power must be strictly construed. A single assessment is all that the act authorizes. If argument is needed to prove the Legislature meant something the language employed does not express, then I suggest the improbability of the Legislature conferring the power of levying a perpetual annual tax of two per cent. on the property of the citizens, in aid of a private corporation. If it be argued that a single assessment of two per cent. would be inadequate to the payment of the amount of the issue of bonds, $250,000, I reply that this issue was not made or determined on as far as the court is advised until after the passage of the law; and probably no such extravagant sum was contemplated when the act was passed. It will not be denied that without the authority conferred by this act of 1853, that the old corporation of Pensacola had no power to contract this debt, and as the same law and the same section of the law, that gave the power to contract the debt, prescribed the mode in which it should be paid, the two provisions must stand or fall together. It is fair to presume that the corporators, who were authorized to decide by a vote whether the money should be borrowed, would not have consented to the loan unless it was to be discharged in the mode prescribed in the law authorizing it. But whether they would or not, it is quite evident they have not given their consent that the loan should be made, to be paid in any other mode than that provided for in the act. If you adopt any other mode then the corporators are entrapped and deceived. They only consented to the loan under the impression and belief that it was to be provided for by a levy of a tax of two per cent. on the assessed value of the said *real estate*. The impecunious and the non-property holders usually preponderate in numbers in all cities and towns,

and it may be that all or a greater part of those voting for the loan owned no real estate.

2d—That the act is unconstitutional authorizing the levy of a tax for the promotion of a private enterprise. The Constitution of the State contained these provisions: "That all freemen have certain inalienable rights, among which are those of acquiring, possessing and protecting property;" and "That private property shall not be taken or applied to public use unless just compensation be made therefor;" and *a fortiori* could not be taken or applied to the uses of individuals or private corporations without any compensation at all, and not only without but against the consent of the owner. See

Taylor vs. Porter, 4 Hill, 140.
Wilkerson vs. Leland 2 Pet. 657.
Cooley Const. Lim. 530.

The enterprise for the promotion of which this tax is sought to be imposed, was the construction of a short and unimportant railway owned by individuals, who were to enjoy all of its emoluments and advantages. The fact that it would accommodate a large number of persons in the means of travel and transportation does not make it less a private enterprise.

Angel & Ames on Corps. §31, 32.
Dartmouth College vs. Woodwood 4, Wheaton 468.

Many hotels and some lines of stages accommodate a larger portion of the public than this railway, and have the same claim to invoke the taxing power in their behalf. The extent of patronage cannot make either less a private enterprise.
See case of The People vs. The Town of Salem 4, American Rep. 400.

Third—That the bonds discribed in the complainants bill are not the bonds of the defendant, but of another corporation of the same name, which was repealed and dissolved by the Legislature of Fiorida before the institution of this suit.

Let us enquire 1st, Whether the charter of the city of Pensacola, under which these bonds were issued, has been repealed?

2d—If so, what was the effect of such repeal? The repealing clause is in the following language: "Upon failure on the part of any incorporated town or city to accept the provisions of this

act within nine months after its approval, all the acts vesting such city or town with power are hereby repealed."

See Florida Acts 1869, p. 28.

Whether a charter be one of revival or a new charter, is not to be determined by the collateral facts that the name of both corporations are the same, and that the officers or a majority of the members, are the same; and that the business of the old corporation, was for a time done, and its debts paid by the new corporation?

Angel & Ames on Corp. 9 Ed. p. 814.

Where a Banking Company, incorporated by same name as a former one, appoints the same President and Cashier, and the officers receive and issue the notes of the former Company, and declare there is no difference between the notes thus issued and those of the new Company, the new Company never having authorized these proceedings, is not liable to pay these notes.

Ibid p. 209.

There is no ambiguity or uncertainty needing explanation or admitting of construction. The word "repeal" has but one meaning, and we cannot look to the consequences for a rule of interpretation. "All Acts vesting such city with power are repealed" What Acts vested the city of Pensacola with power? The Bill informs the Court that the charter was enacted in 1839 and amended in 1853; and if these Acts are repealed, then how can the old corporation of Pensacola that issued these Bonds be galvanized into life through the instrumentallty of Courts by bills in equity or by writs of mandamus so as to respond to the demands of the complainant? It has gone whence no traveler returns. It cannot be contended even with plausibility that the corporation was only deprived of its *active powers*, leaving in existence the corporation as an entity, for the language is not that certain *sections* conferring powers be repealed, but "all the *Acts* vesting the city with power" were repealed. The acts then that gave birth to the corporation are swept from the statute book, and the corporation of 1839 no longer exists.

But let us pursue this idea a little further. Suppose the corporation still exists as an entity shorn of its powers. Why ask, as the complainant does, that such a corporation be directed to levy

a tax to pay a debt ? It has no power to respond to the call. It cannot be claimed that the proceedings taken in 1870 by the inhabitants of the district of country comprising the present city of Pensacola to incorporate the town has had the effect of conferring *power* on the *old* corporation. If the old corporation continued to exist, then the action taken by the people in 1870 to incorporate the city was void, for two municipal corporations cannot exist in the same locality at the same time. The position then that the old corporation continued to exist, shorn of its powers, can only be made available for one purpose and in one way, which is, as a basis on which to rest the prayer of the bill that the court direct an assessment and collection of a tax from the people of the corporation for the payment of the bonds. The claim to such jurisdiction and the exercise of such extraordinary power has found favor I think in but one court [Circuit Court of Missouri, Welsh vs. St. Genevieve], and has happily been set aside by this court in the case of Rees vs. The City of Watertown, 19 Wal. p. 107, where the old and familiar doctrine is distinctly recognized, and asserted that the taxing power is in the Legislature, to be exercised through the political department of the Government, and not by the courts through its officers. These views and authorities I think are conclusive to show that the purpose of the Legislature was absolutely to repeal the act of 1839 and amendments thereto, incorporating the old city of Pensacola ; and the only remaining enquiry is,

2d—What is the effect of such repeal ? Was the corporation dissolved, and were or were not its liabilities extinguished ?

Of course I have no purpose to attack the doctrine of the inviolability of contracts. From the case of Fletcher vs. Peck, 6 Cranch, and Woodwood vs. Dartmouth College, 4 Wheaten, to the present time, it has been held that a private incorporation is a contract between the State and the corporators, and is within the protection of the 10th section of the first article of the Constitution, prohibiting legislation impairing the obligation of contracts. But in the Dartmouth College case the Court says: "A distinction exists as to cities and towns, which exist for public purposes only; the Legislature have under proper limitations the right to change,

enlarge or restrain, securing, however, the property for the use of those for whom it was purchased."

Angel and Ames, p. 785.

In respect of public and municipal corporations, as counties, towns and cities, the Legislature under proper conditions have a right to change, modify, enlarge or destroy."

2 Kent., 372, 310, 311, 9 Ed.

"In such corporations there is but one party. The trustees or governors of the corporation are merely trustees for the public." 373. The case of East Hartford vs. Hartford Bridge Co., 10 How., 532, was one of charter by legislation to the town of Hartford of a ferry. Held "that the grantee, the town, being a mere organization, was liable to have its powers, rights and duties modified or abolished at any moment by the Legislature." " They are incorporated for public and not for private objects. They are allowed to hold privileges or property only for the public.

Ibid 534.

" The doings between them and the Legislature are in the nature of Legislation rather than compact'.'

Ibid 534.

"The Legislature is bound to regulate such public bodies, as much as to organize them at first."

534.

" When municipal bodies are wished to be in any respect, not subject to Legislative control, it should be so expressed in the Constitution of the State."

Ibid 536.

" It could alter or abolish wholly the political corporation to which the grant was made, as is yearly done in dividing towns and counties, and discontinuing old ones.'

536, 537.

See also, Charles River Bridge vs. Warren Bridge, 11 Peters 436.

Savage vs. Walsh 26 Ala. 619.

The power of a municipal corporation to surrender its corporate existence, has been questioned in England, but for the better

opinion is, that when the surrender is duly made and accepted, it is effectual to dissolve a municipal body."

Angel & Ames on Corp. 793.

An act of the Legislature repealing the act of incorporation, joined with the assent of the corporation, would undoubtedly be sufficient.

Page 796.

The assent of the corporation is shown in their case, by its election not to organize under the act of 1869, thus accepting the result of dissolution indicated in the said act as the consequence of such non-action It thus appears that this case comes up to the English rule, which is more stringent than the rule prevailing in this country, requiring the consent of municipal corporations to dissolution by legislation.

In consequence of the construction that has been put on the clause of the Constitution of the United States, protecting contracts it has become usual for Legislatures, in acts of incorporation for private purposes, "either to make the duration of the charter conditional, or to reserve to themselves the power to either modify or repeal the charter at their pleasure, and as the power of repeal is thus made a qualifying part of the grant, its exercise cannot impair the obligation of the grant."

Angel & Ames 787.

"Laws that are in existence applicaple to a contract when it is made, become part of that contract as much so as if inoorporated into it."

Von Hoffman vs. City of Quincy, 4 Wal. 550.
Rees vs. City of Watertown, 19 Wal. 121.

"All laws in existence when the contract is made are necessarily referred to in it, and from a part of the measure of the obligation of the one party and the right acquired by the other."

Rees vs. Watertown.
19 Wal. 121.

As has been sufficiently shown, the law of municipal corporations is, that they are subject to repeal, and the charter of the old corporation of Pensacola, being so subject to repeal, when the Complainant's bonds were issued, their liability to repeal and consequent dissolution qualified the obligation of the city as much as

though it had been incorporated into the bonds. The same consequence, must therefore follow the repeal of this corporation, as the authorities say, follow the repeal of a private corporation, when the right of repeal is expressly reserved in the charter, which consequence is dissolution.

Then what is the effect of the dissolution of a corporation upon its contracts?

At common law upon the civil death of a croporation, "debts due to and from it are totally extinguished, so that neither the members, non-directors of the corporation can recover or be charged with them in their natural capacities."

Angel & Ames on Corp. 109-10.

"Upon dissolution therefore of a corporation, suits pending for or against it abate."

Ibid.

In the case of Mouma vs The Potomac Co. 8 Pet. 285, there had been a surrender of the charter of that company and a conveyance of its property to the Chesapeake and Ohio Canal Co., under the authority of the Legislature of Maryland and Virginia, and a *Sci. Fa* was brought to revive the judgment against The Potomac Co.

Story J. said: "A *Sci. Fa.* can no more be maintained and judgment had thereon against a dead corporation, than against a dead man."

He also said: "The dissolution of a corporation under the acts of Virginia and Maryland, cannot be considered within the clause of the United States Constitution prohibiting the impairing of contracts, any more than the death of a private person can be said to impair the obligation of contracts."

Ibid 285.

Again: "A corporation by its very terms and nature of its political exisience is subject to dissolution."

287.

It should be recollected that this was said in reference to a *private* corporation which is less under legislative control than bublic corporations.

Again, Justice Story says: "Every creditor must be presumed

to understand the nature and incidents of such a body politic, and to contract with reference to them."

Ibid 287.

The common law doctrine, that the debts of dissolved corporations are totally extinguished, though acknowledged and recognized, is not favored, and Courts of Equity hold all the property of such dissolved corporations subject to its debts whenever found.

See Curran vs. Arkansas.
15 How. 312.
2 Kent 307 n. 2.

Such rule applied to this case, will enable the Complainant, if he has any just claim against the dissolved corporation of Pensacola, which is yet to be determined, to subject to the payment of his claim all the property of the corporation that can be traced. But it would be going far beyond the limits of that doctrine, to authorize an assessment of taxes against the corporation of the present City of Pensacola, incorporated in the year 1870, to pay such claim. This is a new and distinct corparation, with new corporators and different powers, and only identical in locality and name. The present corporation has derived no benefit from the issue of bonds they are called on to pay. They are not the bonds of Defendant, and they have received no consideration for them.

For a certain period of time, to-wit: From 4th November, 1869 (nine months after date of the Act of 1869, authorizing and prescribing the mode for the incorporation of cities and towns) to 26th January, 1870, that part of the county of Escambia, State of Florida, that formerly composed the City of Pensacola, was without a municipal government other than that of the county of Escambia, and during that period of time its inhabitants were subject to road duty and the regular police regulations of the county. Suppose for example, that no proceedings had been taken under the act of 1869, to establish a municipal government, and the cite of the old city had been converted into a farm. Would it be contended that that farm could be taxed to pay the bonds of Complainant?

In the case of Von Hoffman vs. the City of Quincy, 4 Wal. 554, the court say: "That when a State has authorized a municipal corporation to contract, and to exercise the power of taxa-

tion to meet its engagements, the power thus given cannot be withdrawn until the contract is satisfied," for the reason that it would impair the obligation of its contracts. This is a wholly different question from that of the power to dissolve a corporation that is under pecuniary obligations. It may well be, that while a corporation is alive, that its power to raise money by taxation to discharge its indebtedness cannot be taken away, because that power existed when its obligations were contracted and constituted a part of the contract, but it does not follow that because a corporation is indebted, that its existence may not be terminated, for when thier indebtedness was incurred the power existed in the Legislature to dissolve the coporation and also formed a part of the contract, as much so as though incorporated in it, as is said in the Von Hoffman case.

To say that because a corporation is indebted, that the Legislature cannot repeal it, would involve the absurdity of making the life of a corporation depend on its indebtedness The Supreme Couts say, on the Mouma case already cited: "It would be a doctrine new to the law, that the existence of a private contract of a corporation, should force upon it a perpetuity of existence, contrary to public policy, and the nature and objects of its charter." 8 Pet. 287.

Chancellor Kent say. 2 vol. 374: On the repeal of a corporation, "the debts due to and from it are extinguished."

This result is so generally recognized that it is not unusual to provide against its full force by legislative enactment.

The State of New York has legislated specially to prevent such consequences.

2 Kent 396.

See also, Moulton vs. Smiley, 16 Ga. 298.

The State of Florida has also recognized this doctrine, in providing in the general incorporation act of 1868, that after dissolution of corporations organized under that act, that the powers of such corporation shall continue for a limited period for the purpose of collecting and paying debts. &c.

See ~~Ala.~~ Acts 1868, p.

This, however, is the first and only provision on the subject, by the Legislature of Florida.

In the case of Colchester vs. Seaber, 3 Burrows 1866, it was held that the ouster of the officers of a municipal corporation did not destroy the debts of the corporation, but this was because the judgment was of ouster of the individuals and not a judgment of forfeiture of the charter.

In Fox vs Horah, 1 Ire. Eq. 361, it was held by Judge Gaston that where the corporation died, and there was no successor or representative, the relation of creditor and debtor ceased, and the debt become necessarily extinct On page 363, that eminent Judge says: "It is not to be questioned that on the expiration of the charter, debts of every kind due from the bank were extinguished as completely as those to it."

See also case of Commercial Bank vs. Lockwood, 2 Harring. and Presd't Port Gibson vs. Moore, 13 Smedes & Marshal 157.

And this consequence of a repeal of a corporation, would seem to be the logical result. A corporation is an artificial being, owing its origin, existence and powers to an act of the Legislature. When the act was repealed that gave it life and being, and power, it ceased longer to exist, and the incidents of its life, that of owing and paying debts ceased also. Put it is not necessary to the defence in this case, to maintain the harsh doctrine of the common law that the dissolution of the corporation of 1839, did absolutely destroy its obligations. We may admit that the bonds survived the dissolution of the corporation, to the extent that the holders of them may, in a court of equity, subject to their payment, any property of the corporation that may be found. If the corporation died without property to discharge its obligations, its creditors are in no worse or better condition than if their creditors had been natural persons, dying insolvent.

As this Court said, in the case of Heine vs. the Levee Com's, 19 Wal. 660, 'it is the experience of every day, and of all men, that debts are contracted that are never paid, though the creditor has exhausted all the resources of the law. It is a misfortune, which in the imperfection of human nature, often admits of no redress. The holder of a corporation bond, must in common with other men, submit to the calamity, when the law offords no relief."

Besides, these debts were contracted with knowledge of the law of municipal corporations, that they were liable to be repealed and

dissolved, and that law entered into and formed a part of the bond, which bond, read according to its legal effect, would be "The City of Pensacola promises to pay to the bearer $1,000, provided its charter is not repealed and its powers of taxation be not then taken away by the Legislature." How can it be said that the repeal of a corporation, that had made such contracts, would impair their obligation? And if the doctrine be, as laid down in the books, that laws in existence applicable to a contract when made become a part of that contract, the foregoing reading of the contract of the old City of Pensacola, is according to its legal effect

I think the following propositions are established:

First. That the bill does not present a case of equity jurisdiction, and that the Complainant has an adequate remedy at law.

Second. That the Florida act of 1853, authorizing the subscription by the city of Pensacola, in aid of the Alabama and Florida R. R. Co., and the assessment of a tax of two per cent. on the *real estate* in the city was and is unconstitutional because unequal and discriminating.

Third. That the said act did not authorize an *annual* tax, but only a single tax of two per cent. on the assessed value of the real estate.

Fourth. That the tax authorized was unconstitutional, because in aid of a private enterprise.

Fifth. That the acts of 1868 and 1869, providing for the incorporation of towns and cities, did repeal and dissolve the charter of 1839, of the City of Pensacola, and that the present corporation of Pensacola is not the successor of that of 1839, but is a new and distinct corporation.

Sixth. That though the obligations of the former corporation of Pensacola may not be destroyed, they can only be enforced against the property of the old corporation, and that it is not competent to levy a tax to pay them, against the inhabitants of the City of Pensacola, incorporated in the year 1870.

Chandler & Yonge
Of counsel for
Appellee